

EXHIBIT B

Adjudicating Misconduct Cases at Williams:

Sexual Assault, Dating Violence,
and Stalking

The logo for Williams, featuring the word "Williams" in white serif font on a dark blue background. Above the text is a horizontal bar composed of several colored segments: green, orange, yellow, and light blue.

Outline

- Understanding the code of conduct
- Standards of evidence
- What do you need to make a decision?
- Sanctioning

We are going to work through the main areas into which we divide the work – prevention, support, disciplinary process –

but with an emphasis on the areas we have talked less about in our recent conversations ... prevention and education work, and the legal frameworks that comprise the compliance and regulatory environment in which we do this work.

Start with some terms and definitions, since we will be moving quickly and since the ways they are used are quite context dependent.

Williams Code of Conduct

- **Sexual Assault**
 - **Non-consensual sexual intercourse:** any sexual intercourse, however slight, with any object, by any person upon any other person, without effective consent
 - **Non-consensual sexual contact:** any sexual touching, however slight, with any object, by any person upon any other person, without effective consent

Code of conduct regarding sexual misconduct is both simpler in some ways and more complicated in others than the law.

-Requires active, specific and clearly expressed consent for all sexual activity.

- Forbids:
 - Sexual contact without consent (sexual assault) and
 - sexual exploitation (other sexual activity – for example filming, voyeurism, coercion via threatening to release explicit images).

The code does not differentiate between different manners of assault (forcible vs. via incapacitation) or weigh in on the intent of the perpetrator.

It also explicitly forbids retaliation for reporting of sexual misconduct.

Williams Code of Conduct

- **Sexual exploitation:** occurs when a student takes nonconsensual, unjust, or abusive advantage of another, for his/her own advantage or benefit, or to benefit or advantage anyone other than the person being exploited
 - Examples could include: prostituting another student, nonconsensual recording of sexual activity, going beyond the boundaries of consent, engaging in peeping tommery, knowingly transmitting HIV or other STIs, and inducing incapacitation with the intent to rape or sexually assault another student

Williams Code of Conduct

- **Dating or Domestic Violence:** refers to a pattern of behaviors committed by a member of a family (related by blood or marriage), a member of a household, a current or former intimate partner, or a current or former partner in a dating or engagement relationship who
 - harms the victim physically
 - attempts to harm the victim physically
 - makes the victim fear that serious physical harm is going to happen
 - threatens, pressures, or forces the victim to engage in sexual behaviors

Williams Code of Conduct

- **Stalking:** A pattern of conduct directed at a specific person that would cause a reasonable person to feel fear, or to fear for the health or safety of a person they are close to, such as a friend or family member. Stalking behaviors can include but are not limited to:
 - non-consensual communication including in-person communication, telephone calls, voice messages, text messages, emails, social media site postings or messages, instant messages, posting of pictures or information on websites, written letters, gifts, or any other communications that are undesired or place another person in fear
 - following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by the victim
 - surveillance or other types of observation, whether by physical proximity or electronic means
 - trespassing, for example in a victim's dorm room
 - vandalism
 - direct physical and/or verbal threats against a victim or a victim's loved ones
 - gathering of information about a victim from family, friends, co-workers, and/or classmates

Williams Code of Conduct

- **Retaliation:** students who make complaints or bring charges against another student for violation of the College Code of Conduct, including complaints regarding sexual misconduct, harassment, or discrimination, may not be subjected to retaliation of any sort, whether verbal, physical or in any other manner, for having done so.

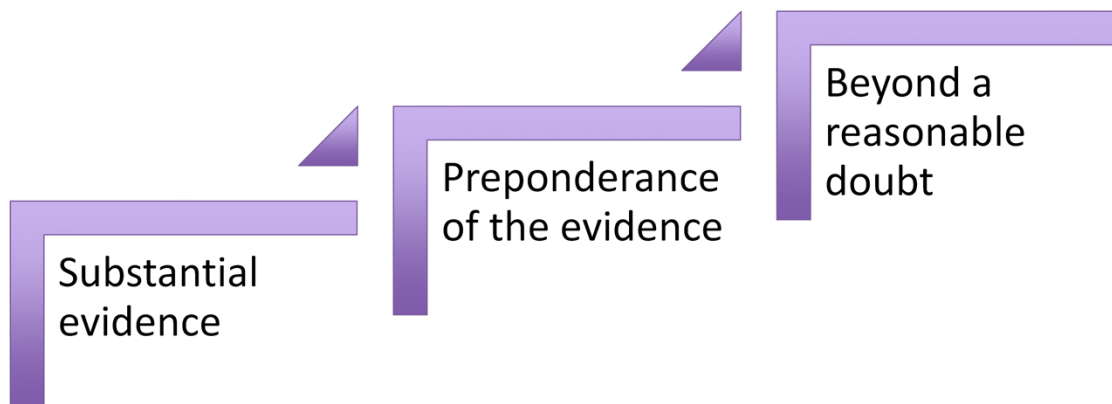
Any student who retaliates against another student in violation of this rule will be subject to disciplinary action through the established disciplinary procedures of the College

STANDARDS OF EVIDENCE

Williams

In order to do this work well, it's crucial for us to do the best we can to actively understand what's happening with sexual assault on the campus. This is one of the places that the national conversation is helpful to us. ... asking the question, tracking the answers.

Level of certainty required



Preponderance of the evidence

- **Standard required by federal law (Title IX)**
- Used in most civil cases, as well as grand jury indictments
- The standard is met if the proposition is more likely than not to be true
 - Based on the more-convincing evidence and its probable truth or accuracy, not the amount of evidence

**WHAT DO YOU NEED TO KNOW
TO MAKE A DECISION?**

Williams

Reaching a finding-Sexual Misconduct

- What section(s) of the conduct policy apply?
 - Separating non-consensual sexual intercourse from other non-consensual sexual contact
 - Was there penetration, however slight?
 - If so, which orifice(s) and with what body part(s) or object(s)?
 - Separating contact-based conduct from non-contact (exploitation, retaliation, verbal conduct that falls under the sexual harassment policy)

Reaching a finding-Sexual Misconduct

- From the respondent
 - What information did the respondent have about whether the complainant was consenting to sexual activity?
 - Would a reasonable person conclude from this same information that the complainant was consenting?
 - If not, what might the respondent have said or done to gain more information about whether the complainant was consenting? Why didn't they do or say those things?

Reaching a finding-Sexual Misconduct

- Did the complainant feel able to stop the respondent's behavior or leave the room and seek help? If not, what was preventing this?
- What was the complainant's reaction to the respondent's behavior?
- How do they describe their feelings and why they didn't leave or stop the behavior?
- Would a reasonable person understand the complainant's reactions?

Note on point 1: not the responsibility of the complainant to "fight off" the respondent, rather, this gives the panel some insight into what the complainant's experience of the respondent's behavior was. If the respondent says they thought they had consent because the complainant stayed in the room and didn't leave, but the complainant says that the respondent blocked them from leaving the room by standing between them and the door, that is an important insight.

Reaching a finding-DV

- Nature of the relationship is already established
- Presence *or* threats of physical harm
 - Examples include photos of injuries, treatment records for injuries, witness statements
 - Electronic evidence (texts, emails, social media postings, voicemails), witness statements
- Fear of future physical harm
 - The role of emotional/psychological abuse

Specific Person; Reasonable Person

- Who is affected by an offender's actions?
 - Victim
 - Friends
 - Roommates/Suitemates
 - Family
 - Co-workers
- Reasonable person?
 - Anyone who might be in a similar circumstance that would feel afraid because of the offender's actions

Understanding Stalking: Fear

- Something may be frightening for the victim but not to you
- Stalking behaviors often have specific meaning that is only understood between offender and victim
- Formal stalking policies enable us to consider behaviors holistically

Behaviors as a whole: individual behaviors are not, in and of themselves, conduct violations or crimes (calling/texting someone, saying hello in public space, etc.)

Understanding Stalking: Context



Reaching a finding-stalking

- Is there a pattern of behavior?
- At whom is the behavior directed?
 - The complainant *and/or* supporters of the complainant (roommates, teammates, etc.)
- Did the behavior cause the complainant to feel fear?
 - How do you know?

Reaching a finding: retaliation

- Whose behavior?
 - A respondent accused of other types of misconduct
 - A third party
 - Doesn't necessarily have to be acting on behalf of the accused individual
- Who is the target?
 - A complainant who has brought forward a complaint of other types of misconduct
 - A “person opposed to conduct forbidden in our policies”—this could be a witness in a case, a whistleblower, an advocate, etc.

Reaching a finding: retaliation

- Actions taken
 - Against someone who has filed a complaint, provided testimony, or in some other way participated in an investigation or process
 - Can also include someone who has intervened as a bystander to stop or attempt to stop harassment, discrimination, misconduct
 - Intimidating, threatening, coercing, or discriminating against an individual because of their conduct or participation
- Impact
 - If the action would deter a reasonable person in the same circumstances from opposing prohibited practices, it is deemed retaliatory
 - *Not dependent on outcome of processes*

LET'S PRACTICE

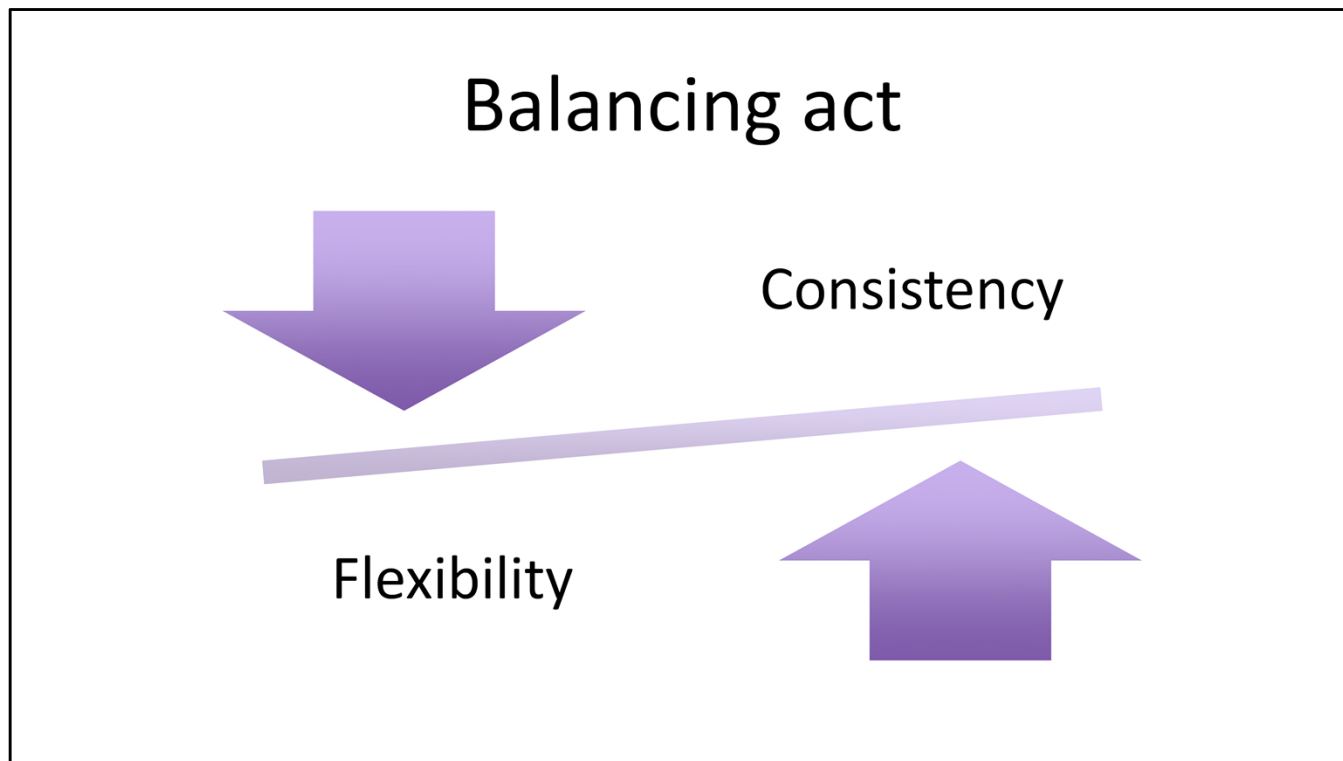
Williams

SANCTIONING

Williams

Purposes of sanctioning

- To punish the behavior of the offender
- To provide redress to the victim and/or community
- To announce the community's values re: the behavior



Consistency: The same behaviors yield approximately the same sanctions each time.
Flexibility: Able to respond to the unique circumstances of each case.

Factors to take into account

- The nature, frequency, and duration of the violent or threatening behaviors
- The extent of harm caused
- The impact of the behavior on others in the community
- The responding student's previous disciplinary record

Factors to take into account

- Broad, deep impact
 - Physical safety of other members of the community
 - Substantially diminishes access of other students to educational resources at Williams
- Likelihood of escalation to significant violence
 - Up to and including sexual violence, homicide and homicide/suicide

What can sanctions include?

- Separation from the college
 - Suspension (temporary) or expulsion (permanent)
- For sexual misconduct:
 - Assessment and treatment by a mental health professional experienced in treating adolescents with sexual behavior problems
- For dating/domestic violence:
 - Completion of a batterer intervention program (*not* anger management)

Returning to the community

- Behavioral contract
- Circles of support and accountability